

WO

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mark David Brown,
Plaintiff,
v.
Alfred B Guinee, et al.,
Defendants.

No. CV-19-00415-TUC-DCB

Edward Peltz,
Plaintiff,
v.
Alfred b. Guinee, et al.,
Defendants.

No. CV-19-00418-TUC-DCB

ORDER

Plaintiffs proceed pro se in this civil rights action, which they initiated in state court on August 22, 2019, and which was removed here by the Defendants. On September 27, 2019, the Plaintiffs filed a Consolidated Amended Complaint. Allegedly, the Plaintiffs were filming a documentary in the customer service area of the Tucson City Justice Court about alleged abuses suffered by a friend, Anthony Potter, there. Plaintiffs allege they have a First Amendment right to freely record the public areas of the Justice Court, which was violated when the City, through its administrators, adopted policies and practices which considered this activity to be workplace harassment and precluded it. They allege that Defendants, Tucson City Police Officers, arrested them for trespass, without probable

1 cause, seized their cell phones and used excessive force, all in violation of the Fourth
2 Amendment to the United States Constitution. (Consolidated Amended Complaint (Doc.
3 11)).

4 On February 24, 2020, the Court issued a case management scheduling Order setting
5 August 7, 2020, as the deadline for completing discovery and September 11, 2020, as the
6 date for filing dispositive motions, with a proposed pretrial order due on October 23, 2020,
7 in the event of no dispositive motions. (Order (Doc. 26)).

8 On May 27, 2020, the Plaintiffs filed a Motion to Compel Answers to Interrogatories
9 and Requests for Admissions. (Doc. 29.) Generally, the Plaintiffs argued that the majority
10 of interrogatories had not been responded to by the Defendants and not even signed by
11 them. Instead, the City Attorney had made objections to many of them or gave a partial
12 answer and noted that answers would be supplemented. (Motion to Compel (Doc. 29) at
13 7.) The Defendants responded that due to COVID-19, the City Attorney's office had been
14 transitioning to working at home, and the Defendants' attorney had asked Plaintiffs for
15 additional time to obtain completed interrogatories from her clients. When Plaintiffs
16 refused the requested extension of time, she had submitted the answers as-is with
17 objections or noted there would be supplementation of answers. She reported that the
18 interrogatories would be completed by June 19, 2020, with the exception of Officer Wilson,
19 who was then on active-duty military status. Tentatively, Officer Wilson would provide
20 responses by August 1, 2020. Plaintiffs' Reply was due June 17, and when no Reply was
21 filed, the Court assumed that the interrogatories had subsequently been answered to the
22 Plaintiffs' satisfaction.

23 On August 7, 2020, the Defendants filed a Motion to Extend [Case Management]
24 Deadlines (Doc. 34.) Defendants seek to extend deadlines for expert disclosures and for
25 discovery to end October 30, 2020. They seek to conduct lay depositions, thereafter, in
26 November, with the dispositive motion's deadline moved to January 15, 2021. The
27 Plaintiffs, however, filed their dispositive motion when due on September 11, 2020, (Doc.
28 41), and object to the proposed extensions to the case management deadlines. Plaintiffs

1 request sanctions against the Defendants by deemed admissions because Defendants failed
2 to timely respond and complete discovery. (Response (Doc. 37.) Defendants object to the
3 Plaintiffs' Response to the Motion to Extend the Case Management dates and ask that it be
4 stricken as an improper motion to compel because there is no certificate of conferral to
5 support it. (Ds Reply (Doc. 39)). The Defendants ask the Court to strike it, *id.*, and to defer
6 ruling on the Plaintiffs' Motion for Summary Judgment until discovery is completed
7 pursuant to the extended deadlines. (Doc. 43.) The Court grants the Defendants' motions
8 to extend the case management deadlines and to defer ruling on the Plaintiffs' dispositive
9 motion until discovery is complete. The Court orders the Defendants to completely answer
10 the Plaintiffs' propounded discovery requests and, thereafter, affords the Plaintiffs an
11 opportunity to revise their dispositive motion, accordingly.

12 It appears that discovery disputes remain regarding Defendants' answers to
13 Plaintiffs' interrogatories and Requests for Admissions. The Court will rule on those
14 that have been raised with some specificity by the Plaintiffs. *See* (Motion to Compel (Doc.
15 29); Motion for Sanctions (Doc. 37)).

16 First, all Defendants shall sign all answers to Requests for Interrogatories and
17 Requests for Admissions.

18 Second, the parties appear to be at odds over answers to Interrogatory Number 5,
19 which, paraphrased, asks whether the City ever distributed or required reading or review
20 of any materials concerning: 1) making arrests or otherwise seizing criminal suspects; 2)
21 determining whether there is probable cause for an arrest; 3) use of force; 4) investigation
22 of a crime scene; 5) police abuse and misconduct; or 6) state or constitutional law? If so,
23 state each: a) the title, author, and publication date of each such piece of material and the
24 date when materials were given to you; b) whether you actually read or reviewed the
25 materials and date of the reviews, and c) any test of the material given to you and the
26 results. The Defendants reportedly objected to this question because it is overly broad and
27 unduly burdensome. It is overly broad to the extent it asks for training related to crime
28 scene investigation, police abuse and misconduct generally, and Fourth Amendment law

1 generally. The Defendants shall answer the interrogatory narrowed to officer training for
2 Fourth Amendment law as it relates to Arizona's trespass law and excess use of force. Both
3 are the subjects of this lawsuit and the City's training and practices are at issue under the
4 *Monell* claim.

5 Third, the answer shall be amended for Sergeant Guinee to the Request for
6 Admission No. 5: Admit or deny that his training indicates that every seizure of any
7 criminal suspect must be based on his reasonable belief that a crime has been or is about to
8 be committed by that suspect. He answered that he has been trained in the Fourth
9 Amendment. The City Attorney explains this answer is because Plaintiffs' Request
10 "misstates the law." (Response to Motion to Compel (Doc. 30) at 2.) Defendant Guinee's
11 answer shall be amended to reflect a denial because the Request "misstates the law." The
12 answer to Request for Admission 6 shall be similarly amended. Defendant Guinee has
13 properly answered Request for Admission No. 10 by asserting that he has no personal
14 knowledge regarding Chris Hale's desires or state of mind and this question calls for
15 speculation. He also properly answers Requests for Admissions 21 and 23 that he has "no
16 personal knowledge," because he avers that he was not present when the requests for
17 Plaintiffs' phones were allegedly made by officers. While it may be helpful for Defendant
18 to have complied with Fed. R. Civ. P. 36(a)(4) and asserted that he made reasonable inquiry
19 and the information he knows or can readily obtain is insufficient to enable him to admit
20 or deny this, the Court finds that any such inquiry would not have produced the type of
21 valuable first hand evidence sought through the Rule 36(a)(4) inquiry.

22 Fourth, the Court addresses the Plaintiffs' assertion that answers by the Defendants
23 were simply conclusions and opinions and failed to be responsive to Plaintiffs' requests for
24 FACTS. Plaintiffs refer to Interrogatory 10, which asked: "do you contend that on either
25 May 30th, January 11th, January 24th, and February 6th there was probable cause to arrest
26 the Plaintiffs? If so, state each FACT that supports your conclusion that probable cause
27 existed." ((Response to Motion to Extend Deadlines (Doc. 37) at 4-5.) Plaintiffs object to
28 descriptions like: "plaintiffs were disrupting the operations of Tucson City Court" and

1 “causing alarm amongst both the city personnel and members of the public.” Plaintiffs
2 describe such answers as evasive because they do “not contain a single fact relevant to
3 probable cause for trespassing, despite the fact that he arrested the Plaintiffs for trespass.”
4 *Id.* at 5. In short, Plaintiffs have a legal theory of the case that probable cause for an arrest
5 for trespass only exists if the arrestee has been told he or she has to leave and, then, refuses
6 to do so. Whether this legal theory bears fruit for the Plaintiffs remain to be seen. Whether
7 in keeping with Plaintiffs’ theory of liability or not, an answer describing the officer’s
8 opinion why he or she arrested the Plaintiffs is responsive to the question.

Finally, the Plaintiffs assert that through all this discovery, the Defendants answers have been so evasive that Plaintiff Brown still does not know the identities of all the officers who forced him to the ground and which officers grabbed his arm and injured his rotator cuff, despite all the interrogatories which require the City's answers to exactly that question. (Response to Motion to Extend Deadlines) (Doc. 37) at 3.) Plaintiffs are certainly entitled to this discovery, but without having the actual questions and answers before it, the Court cannot discern where or why this information has not been revealed. This is why Motions to Compel require the moving party to set forth, "separately from a memorandum of law, the following in separate, distinct, numbered paragraphs: 1) the question propounded, the interrogatory submitted, the designation requested or the inspection requested; 2) the answer, designation or response received, and 3) the reason(s) why said answer, designation or response is deficient." LRCiv. 37.1. This was not done in the Plaintiffs' Motion to Compel.

1 that the parties certify they have conferred in an attempt to resolve the discovery dispute.
2 Fed. R. Civ. P.37(a)(1). Failure to fully comply with LRCiv. 37.1 or Fed. R. Civ. P. 37(a)
3 shall result in the Court's denial of the motion to compel.

4 **Accordingly,**

5 **IT IS ORDERED** that the Plaintiffs' Motion to Compel (Doc. 29) is DENIED for
6 failing to comply with LRCiv. 37.1 or Fed. R. Civ. P. 37(a), but the above directives are
7 provided to assist the parties in resolving the discovery disputes reflected in the Motion to
8 Compel.

9 **IT IS FURTHER ORDERED** that the Plaintiffs' Motion for Sanctions (Doc. 37)
10 is DENIED.

11 **IT IS FURTHER ORDERED** that the Defendants shall have 21 days from the
12 filing date of this Order to supplement the answers to Requests for Admissions or
13 Interrogatories to comply with the general directives contained in this Order and return
14 them to the Plaintiffs.

15 **IT IS FURTHER ORDERED** that the Plaintiffs shall have 30 days to review those
16 answers, confer with the Defendants regarding any disputes, and file a Motion to Compel
17 with this Court, if necessary.

18 **IT IS FURTHER ORDERED** that the Defendants' Motion to Extend Case
19 Management Deadlines (Doc. 34) is GRANTED as follows: 1) Plaintiff's rebuttal to any
20 expert report disclosure, having been made by October 15, 2020, shall be made by
21 November 15, 2020; 2) depositions shall be completed by January 1, 2021. Discovery shall
22 end on January 1, 2021. The Court sets this lengthy time for the parties to complete the
23 remaining discovery because of the holidays and COVID-19 complications which hinder
24 the taking of depositions. The Court resets the dispositive motions deadline to February 1,
25 2021.

26 **IT IS FURTHER ORDERED** that the Motion to Defer Ruling on Plaintiffs'
27 Motion for Summary Judgment (Doc. 43) is GRANTED and the motion (Doc. 41) is
28 ////

1 STRICKEN, without prejudice to it being revised and refiled subsequent to completion of
2 the discovery being allowed here.

3

4 Dated this 2nd day of November, 2020.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

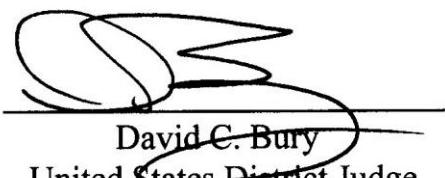
24

25

26

27

28



David C. Bury
United States District Judge